## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION CIVIL ACTION NO: 3:10-CV-273-RJC-DCK

MITCHELL GATEWOOD,	)
Plaintiff,	)
V.	) MEMORANDUM ANI
	) <b>RECOMMENDATION</b>
	)
JULIE MUELLER, Special Agent with the	)
Federal Bureau of Investigation, et al.,	)
Defendants.	)
	)

THIS MATTER IS BEFORE THE COURT on the "Motion To Dismiss Defendants Julie Mueller And David Yu" (Document No. 11) filed August 25, 2010. This matter has been referred to the undersigned Magistrate Judge pursuant to U.S.C. §636(b), and the motion is ripe for disposition. Having considered the motion, the record, and the applicable authority, the undersigned will respectfully recommend that the motion to dismiss be granted.

Responses to the pending motion were due by September 13, 2010. On September 14, 2010, the undersigned *sua sponte* allowed an extension of time for the *pro se* Plaintiff to respond to the motion, up to and including September 27, 2010. (Document No. 15). The Court's Order also gave notice to Plaintiff of his right to respond, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), and advised him that failure to file a timely and persuasive response would likely lead to dismissal of the lawsuit. Id. A complaint may be dismissed pursuant to Rule 41(b) of the Federal Rules Of Civil Procedure for failure to prosecute and/or failure to comply with orders of the court. Steed v. Morton, 2007 WL 3306779 at \*2 (D.S.C. 2007)(citing Ballard v. Carlson, 882 F.2d 93 (4 Cir. 1989) cert. denied 493 U.S. 1084 (1990)).

Based on the foregoing, and good cause shown by Defendants, the undersigned will

recommend that the motion to dismiss be granted.

IT IS, THEREFORE, RECOMMENDED that the "Motion To Dismiss Defendants Julie

Mueller And David Yu" (Document No. 11) be **GRANTED**.

NOTICE OF APPEAL RIGHTS

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the

Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions

of law, and recommendation contained herein may be filed within fourteen (14) days of service of

same. Responses to objections may be filed within fourteen (14) days after service of the objections.

Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with

the District Court constitutes a waiver of the right to de novo review by the District Court. <u>Diamond</u>

v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections

will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page

v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir.

1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

The Clerk is directed to send copies of this Memorandum and Recommendation to the pro

se Plaintiff, counsel for the Defendants and the Honorable Robert J. Conrad, Jr.

Signed: September 28, 2010

David C. Keesler

United States Magistrate Judge

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